

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

FILED

U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

NOV 18 1998

JAMES COOPER, JR.

JAMES W. MCCORMACK, CLERK
By: [Signature]
DEP. CLERK

V.

PB-C-98-244

LARRY NORRIS,

RESPONDENT

ORDER

The court has examined this petition for habeas corpus relief. The respondent contends that petitioner did not properly present his federal claims in state court and that he has procedurally defaulted the claims. If a petitioner has procedurally defaulted his federal claims, he can obtain review if he shows cause for his default in state court and actual prejudice as a result of the constitutional violation. Wainwright v. Sykes, 433 U.S. 72, 88-90 (1977). The existence of cause "must ordinarily turn on whether the prisoner can show some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." Murray v. Carrier, 477 U.S. 478, 488 (1986). For example, a showing that the factual or legal basis for the claim was not reasonably available to counsel, that some interference by officials made compliance impracticable, or that counsel's performance was constitutionally ineffective under Strickland v. Washington, 466 U.S. 668 (1984), would constitute factors


external to the defense and cause for a procedural default. Coleman v. Thompson, 501 U.S. 722, 753 (1991). Where a prisoner has no constitutional right to an attorney, such as in state post-conviction proceedings, any attorney error that led to default cannot constitute cause to excuse the default in federal court. Id. at 757.

A petitioner also may obtain review if he can show that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. at 496. To meet the actual innocence standard, a petitioner must present **new reliable evidence** not presented at trial and demonstrate that "it is more likely than not that no reasonable juror would have found" him "guilty beyond a reasonable doubt." Schlup v. Delo, 115 S.Ct. 851, 867 (1995); Brownlow v. Goose, 66 F.3d 997, 999 (8th Cir. 1995).

The petitioner is hereby ORDERED to submit to the Court, by December 18, 1998, a written statement describing the circumstances that led to the petitioner's failure to obtain a ruling on the merits of each ground that the respondent has alleged is now procedurally barred. The statement should be brief and to the point. It should only state facts. It should not contain any citation to legal authority of any kind. The petitioner should address each ground separately.

If there is no excuse for petitioner's failure to obtain a state court ruling, the petitioner should say so. Petitioner may also submit **new** reliable evidence not presented at trial to demonstrate that "it is more likely than not that no reasonable juror would have found" him "guilty beyond a reasonable doubt." The written statement shall be titled "Petitioner's Statement of Cause and Prejudice." It should be mailed to the Court Clerk's office for filing and must include the style of the case and case number. The petitioner should not mail a letter directly to the judge in response to this order.

IT IS SO ORDERED this 17th day of November, 1998.


UNITED STATES MAGISTRATE JUDGE

THIS DOCUMENT ENTERED ON DOCKET SHEET IN
COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP
ON 11-19-98 BY [Signature]

bm

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Post Office & Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

November 19, 1998

* * MAILING CERTIFICATE OF CLERK * *

Re: 5:98-cv-00244.

True and correct copies of the attached were mailed by the clerk to the following:

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Little Rock, AR 72201-2610

James W. McCormack, Clerk

Date: 11-19-98

BY: 